By its second plea in law, the Commission claims that the second subparagraph of Article 23(1) of Directive 2008/50/EC imposes a clear and urgent obligation on Member States in the event that limit values are exceeded to adopt air quality plans setting out appropriate measures to ensure that the duration of any exceedance is as short as possible. The Commission submits that the Hellenic Republic failed to draw up an appropriate air quality plan in respect of the EL0004 conurbation of Thessaloniki, in breach of the obligation laid down in Article 23(1) of Directive 2008/50/EC.

(1) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

Appeal brought on 3 February 2021 by Química del Nalón SA, formerly Industrial Química del Nalón SA against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 16 December 2020 in Case T-635/18, Industrial Química del Nalón SA v Commission

(Case C-73/21 P)

(2021/C 128/35)

Language of the case: English

Parties

Appellant: Química del Nalón SA, formerly Industrial Química del Nalón SA (represented by: P. Sellar, advocaat, K. Van Maldegem, avocat, M. Grunchard, avocate)

Other parties to the proceedings: European Commission, Kingdom of Spain and European Chemicals Agency

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court for consideration; and

— reserve the costs.

Pleas in law and main arguments

First plea in law, alleging that the General Court's finding that the appellant's argument that the Commission committed a manifest error did not necessarily imply also the argument that the Commission had infringed the duty of act diligently, is wrong as a matter of law.

Second plea in law, alleging that the General Court was wrong as a matter of law to use an alleged lack of legal clarity of point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 (1) as a ground for dismissing the legal argument that was actually being made by the appellant.

Third plea in law, alleging that the General Court could not rely on the finding that the legal framework was complex in order to excuse the Commission's failure to take into account the lack of CTPHT's (classified pitch, coal tar, high-temp) solubility. The General Court had actually held the opposite in earlier related proceedings (Case T-689/13 DEP, *Bilbaina de Alquitranes SA and Others v European Commission*). Without any explanation for holding the opposite, the General Court's reasoning is insufficient and contradictory.

Fourth plea in law, alleging that the General Court wrongly applied the ordinary, due diligence test. By finding that the Commission acted as any other ordinary, duly diligent administrative authority would, it used an incorrect and inappropriate point of comparison to assess the due diligence and ordinariness of the Commission.

Fifth plea in law, alleging that the General Court's statement of reasons is insufficient and contradictory insofar as that court found, without indicating any evidence and by only relying on the opinion of the Advocate General, that the Commission may have had difficulties in correcting its manifest error of assessment, thereby suggesting that Commission's approach could be excused.

Sixth plea in law, alleging that the General Court was wrong in law to conclude that the Commission's error could be excused by reference to the precautionary principle because it is settled case law that the principle cannot be invoked during the classification of a substance.

(1) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008, L 353, p. 1).

Appeal brought on 4 February 2021 by Deza a.s. against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 16 December 2020 in Case T-638/18, Deza a.s. v Commission

(Case C-74/21 P)

(2021/C 128/36)

Language of the case: English

Parties

Appellant: Deza a.s. (represented by: P. Sellar, advocaat, K. Van Maldegem, avocat, M. Grunchard, avocate)

Other parties to the proceedings: European Commission, Kingdom of Spain and European Chemicals Agency

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court for consideration; and

— reserve the costs.

Pleas in law and main arguments

First plea in law, alleging that the General Court's finding that the appellant's argument that the Commission committed a manifest error did not necessarily imply also the argument that the Commission had infringed the duty of act diligently, is wrong as a matter of law.

Second plea in law, alleging that the General Court was wrong as a matter of law to use an alleged lack of legal clarity of point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 (1) as a ground for dismissing the legal argument that was actually being made by the appellant.

Third plea in law, alleging that the General Court could not rely on the finding that the legal framework was complex in order to excuse the Commission's failure to take into account the lack of CTPHT's (classified pitch, coal tar, high-temp) solubility. The General Court had actually held the opposite in earlier related proceedings (Case T-689/13 DEP, *Bilbaina de Alquitranes SA and Others v European Commission*). Without any explanation for holding the opposite, the General Court's reasoning is insufficient and contradictory.

Fourth plea in law, alleging that the General Court wrongly applied the ordinary, due diligence test. By finding that the Commission acted as any other ordinary, duly diligent administrative authority would, it used an incorrect and inappropriate point of comparison to assess the due diligence and ordinariness of the Commission.

Fifth plea in law, alleging that the General Court's statement of reasons is insufficient and contradictory insofar as that court found, without indicating any evidence and by only relying on the opinion of the Advocate General, that the Commission may have had difficulties in correcting its manifest error of assessment, thereby suggesting that Commission's approach could be excused.